

CALIFORNIA DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

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July 16, 2004

DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS**Amendment of Section 9525, Chapter 2.5,
Division 4, Title 9, California Code of Regulations****COUNTY SACPA ALLOCATIONS****Notice of Rulemaking and Public Comment Period**

NOTICE IS HEREBY GIVEN that the California Department of Alcohol and Drug Programs proposes to amend Section 9525, Title 9, California Code of Regulations (CCR).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

The Department of Alcohol and Drug Programs (ADP) is proposing an emergency regulatory action to change the formula used to calculate the allocation of funds to counties for implementing the Substance Abuse and Crime Prevention Act of 2000 (SACPA). This change will result in a fairer and more equitable allocation of funds. It places more emphasis on demonstrated SACPA client treatment caseloads, yet avoids drastic annual changes in funding that might otherwise disrupt SACPA programs.

For FY 2001-02, 2002-03, and 2003-04, ADP based SACPA allocations on a base allocation (50%), county drug arrest data (25%), and total county drug treatment caseload (25%).

For FY 2004-05 and following years, ADP proposes to change the allocation formula to a base allocation (50%), county drug arrest data (10%), and county SACPA client treatment caseload data (40%). The portion of each county's SACPA allocation based on drug arrests is reduced and the portion based on SACPA treatment caseload is increased in order to encourage counties to place more SACPA clients in treatment.

When SACPA was first adopted in 2000, ADP based its methodology for distributing SACPA funds on total county drug treatment caseload data (i.e., the number of individuals receiving drug treatment in each county) because SACPA treatment caseload data did not yet exist.



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A more recent review of county SACPA plans and expenditures shows that some counties expend SACPA funds before the end of the fiscal year, while other counties carry over funds from previous fiscal years.

Discussions between ADP and the SACPA Statewide Advisory Group indicated that this disparity was caused in part by the fact that the allocation was based on total county drug treatment caseload data, rather than on more specific county SACPA treatment caseload data.

As a result, stakeholders asked ADP to develop an allocation formula that would more accurately respond to a county's treatment caseload needs. The allocation formula proposed in this regulation was developed through collaboration between ADP, the SACPA Statewide Advisory Group, and the County Alcohol and Drug Program Administrators Association of California (CADPAAC).

This change is needed to distribute SACPA funds to counties in proportion to their actual SACPA treatment needs, so that all counties will have sufficient SACPA funds to provide SACPA treatment services throughout the fiscal year. Without this amendment, some counties will not be able to provide drug treatment instead of incarceration, as mandated by the Substance Abuse and Crime Prevention Act of 2000.

While the computations contained in the regulation may appear complicated, such complexity is needed to avoid large percentage increases or decreases in the allocation amounts counties would receive, thereby avoiding disruption to county SACPA programs. Additionally it is necessary to draft the regulation with such specificity so that counties can follow the process that is used to develop their allocations. Simplifying the regulatory language to make it more user-friendly would sacrifice specificity. A more simple explanation of the regulations is contained in the initial statement of reasons enclosed with this request.

Specifically, this regulatory change makes the following amendments:

- Current Section 9525(a) requires ADP to reserve up to one half of one percent (0.5%) of total funds from the Substance Abuse Treatment Trust Fund (SATTf) for a long term evaluation of the SACPA program. Section 9525(a) is amended to require ADP to reserve such funds each year. This change is needed for clarity.
- Current Subsection 9525(b) allows ADP to reserve up to five percent (5.0%) of total SATTf funds, subject to annual approval by the State Department of Finance. Section 9525(b) is amended to specify that ADP may reserve such funds each year. This change is needed for clarity.
- No changes have been made to Section 9525(c).
- Section 9525 (d), (e), and (f) have been deleted and replaced with new subsections (d), (e), (f), (g), (h), (i), and (j)

- New Section 9525(d) bases fifty percent (50%) of each county's initial SACPA allocation for FY 2003-04 and following fiscal years on county population, approximately forty percent (40%) on annual county SACPA treatment caseload, any approximately ten percent (10%) of annual county drug arrest data. Any remaining SATTF funds would be distributed to counties as a supplemental allocation.
- New Section 9525(e) would distribute an allocation based on population to each county for FY 2004-05 and following years. A minimum of \$146,278 would be allocated to each county. That amount would be adjusted by the ratio of each county's total population to the total Statewide population, according to Department of Finance population estimates for 2002. The \$58,511,478 total to be distributed using this formula is equal to fifty percent (50%) of the total amount (\$117,022,956) distributed to all counties for fiscal year (FY) 2003-04 for SACPA drug treatment. This portion of the SACPA allocation is frozen at the FY 2003-04 base amount to prevent wide fluctuation in county allocations year to year, in order to facilitate county planning.
- New Section 9525(f) would distribute an allocation based on county SACPA treatment caseload data to each county for FY 2004-05 and following years. County SACPA treatment caseload data is being used instead of county drug treatment data, because SACPA treatment caseload data is a more accurate indicator of county SACPA treatment needs than is total county drug treatment data. The portion of each county's SACPA allocation based on SACPA treatment caseload was increased in order to provide an incentive for counties to place more SACPA clients in treatment in lieu of incarceration, as mandated by the Substance Abuse and Crime Prevention Act of 2000.
- New Section 9525(g) would distribute an allocation based on county drug arrest data to each county for FY 2004-05 and following years.
- New Section 9525(h) adjusts county SACPA treatment caseload data and county drug arrest data to place the counties on the same measuring scale, using county SACPA treatment caseload data and drug treatment caseload data per thousand of county population (as shown in the most recent annual data obtained from the California Department of Finance). New Section 9525(h) also specifies that the standard deviation, a measure of variability around the mean, shall be used to determine the degree to which a county's SACPA treatment caseload data or drug arrest data actually deviates from the statewide mean. In the calculations, numbers are rounded to two decimal places and dollars are rounded to the nearest dollar. The current methodology is structured so that the most populous counties receive the bulk of funding, regardless of the actual rate of drug treatment caseload. The proposed methodology seeks to minimize the weight of population, by standardizing SACPA treatment caseload as a rate per thousand of each county's population. This change is necessary to facilitate accurate county-to-county comparisons of SACPA treatment caseload, regardless of county population.

- New Section 9525(i) specifies that the county's allocation based on population shall be added to its allocations based on SACPA treatment caseload data and county drug arrest data, to determine the amount of the county's initial allocation. If the sum of all county initial allocations is less than the total available SATTf funds for the year, due to the calculations specified in Section 9525(h), new Section 9525(i) specifies that any remaining funds shall be distributed to counties as a supplemental allocation.
- New Section 9525(j) specifies that the county's initial allocation shall be added to its supplemental allocation to determine the county's total SACPA allocation for the year.
- Current Sections 9525(g) and (h) have been renumbered as new subsections (k) and (l). No changes have been made to these two subsections.

An example is given to demonstrate each of the calculations in Section 9525.

AUTHORITY:

This regulation is being adopted pursuant to Sections 11755 of the Health and Safety Code.

REFERENCE:

The statutory reference for this regulatory action is Section 11999.6 of the Health and Safety Code

FISCAL IMPACT STATEMENTS:

Anticipated costs to federal government: ADP does not anticipate any costs to federal government as the result of this regulatory action, because this regulation does not impact any federally funded State agency or program.

Anticipated costs to State General Fund: ADP does not anticipate any costs to the State General Fund, because this regulatory action does not expand the scope of the implementing statute.

Anticipated costs to county or local government: The proposed formula would result in lower allocations than the current formula for 29 counties, and higher allocations for 29 counties. The range of loss for counties would be 0.20% to 16.8%. The range of gain for counties would be +0.25% to +23.3%. ADP anticipates a minimal impact on counties statewide because the allocation formula has been designed to avoid drastic annual changes in funding that might disrupt SACPA programs.

Anticipated impact on business: ADP does not anticipate an impact on businesses statewide, because statewide total funds available to counties for purchasing treatment services from providers will not be impacted. ADP does not anticipate that this regulatory action will affect the ability of California businesses to compete with businesses in other states. ADP does not

anticipate that this regulatory action will affect the creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

Impact on Small Businesses: ADP does not anticipate an impact on businesses statewide, because statewide total funds available to counties for purchasing treatment services from providers will not be impacted.

Cost Impact on Representative Private Persons or Businesses: None. ADP is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Impact on Housing Costs: ADP does not anticipate that this regulatory action will impact housing costs in any way.

LOCAL MANDATE DETERMINATION:

ADP has determined that this proposed regulatory action will not impose any new mandates on school districts or other local governmental agencies or any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with Section 17500), Division 4 of the Government Code.

WRITTEN COMMENT PERIOD:

Any interested person or his authorized representative may submit written comments on the proposed regulatory action. **The written comment period closes at 5 p.m. on August 30, 2004.** Please submit any written comments before that time. ADP cannot accept written comments after the close of the public comment period. Please send written comments to Mary Conway, Regulations Coordinator, Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA 95814. Comments may also be submitted by fax at (915) 323-5873 or e-mail at MCONWAY@ADP.STATE.CA.US.

SCOPE OF TESTIMONY:

Section 11346.8(c) of the Government Code prohibits ADP from making any changes to the text of a noticed regulation after the public hearing, unless the change was so sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed action. Therefore please make your comments specific to the regulation discussed in this notice. Please indicate the number of the section you would like changed, the specific change requested, and the reason why you would like the section changed. Since ADP cannot make changes to sections of regulation which were not mentioned in this public notice, during the public comment period ADP will not consider testimony regarding changes which are outside the scope of this notice. If you wish to request ADP to amend, adopt, or repeal additional sections of regulation, ADP is required to consider those changes in a separate regulatory action.

PUBLIC HEARING:

ADP has not scheduled a public hearing on the proposed regulatory action. However, if any person wishes to submit oral comments, ADP will schedule a public hearing upon receipt of that person's written request. Such request must be received at the address shown above no later than 15 days prior to the close of the written comment period.

CONSIDERATION OF ALTERNATIVES:

Pursuant to Section 11346.5(a)(13) of the Government Code, ADP must determine that no reasonable alternative considered by ADP or that has otherwise been identified and brought to the attention of ADP would be more effective in carrying out the purpose for which this regulatory action was taken. ADP must also determine that no alternative would be as effective and less burdensome to affected private persons than the regulatory action taken. ADP will consider any alternatives presented during the public comment period.

ADDITIONAL CHANGES:

ADP may modify the proposed regulation in response to testimony received during the 45-day public comment period, so long as any additional changes made are sufficiently related to the proposed regulatory action and within the scope of this notice. ADP will make available to any interested persons, for at least 15 days prior to the date on which ADP adopts, amends, or repeals the resulting regulation, the full text of any regulation which is changed or modified from the express terms to this regulatory action. ADP will mail a copy of the additional changes to any person who testified or submitted comments during the public hearing (if one is requested), who submitted written comments during the 45-day public comment period, or who requested copies of additional changes. Please call ADP's regulations coordinator at (916) 327-4742 if you wish to receive a copy of any additional changes and you do not plan to present comments regarding the proposed regulatory action.

AVAILABILITY OF TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS:

ADP has prepared and has available for review upon request the text of the proposed regulations discussed in this notice, written in plain English; an initial statement of reasons, explaining the necessity for each regulatory change; and all the information upon which the proposed regulations were based. To obtain a copy, please call Mary Conway at (916) 327-4742 or write to her at the address shown on the first page of this notice. If you received this public notice in the mail, the text of the proposed regulation and the initial statement of reasons were enclosed. The proposed regulations and initial statement of reasons are also available on ADP's web site at <http://www.adp.ca.gov>.

PERSON TO CONTACT FOR ADDITIONAL INFORMATION:

ADP's contact for this regulation package is Mary Conway, ADP's Regulations Coordinator, at (916) 327-4742. Peggy Blair, at (916) 322-1222 is the back up contact. Questions regarding the policy contained in the proposed regulatory action should be directed to Peggy Blair.

FINAL STATEMENT OF REASONS:

After the close of the 45-day public comment period, ADP will summarize and respond to all public comments in a written final statement of reasons. To obtain a copy of the final statement of reasons, please call Mary Conway at (916) 327-4742. The final statement of reasons will also be posted on ADP's web site at <http://www.adp.ca.gov>.